

UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF NEW YORK

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UNITED STATES OF AMERICA,

v.

CHRISTIAN O. DALMAU,

Defendant.

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**DECISION AND ORDER**  
14-CR-165-A

The Defendant, Christian O. Dalmau, is charged in a one-Count Indictment with violating 18 U.S.C. § 922(g) (3) by possessing a firearm while an unlawful user of a controlled substance. The case was referred to Magistrate Judge Hugh B. Scott pursuant to 28 U.S.C. § 636(b)(1) for the conduct of pretrial proceedings.

Defendant Dalmau filed a motion to suppress a firearm and to suppress an oral statement the Defendant allegedly made before he was given *Miranda*<sup>1</sup> warnings of his rights to remain silent and to have the advice of legal counsel. Dkt. No. 21. Magistrate Judge Scott held a suppression hearing on June 1, 2016, and the motion to suppress was deemed submitted after post-hearing briefing. After issuing a Report and Recommendation that recommended that the Defendant's motion to suppress be denied, the Magistrate Judge granted a motion for reconsideration filed by the United States, Dkt. No. 38, and filed an Amended Report and Recommendation on October 11, 2016 (Dkt. No. 42), that also recommended that the motion to suppress be denied.

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<sup>1</sup> *Miranda v. Arizona*, 384 U.S. 436 (1966).

Review of the Amended Report and Recommendation is by *de novo* and clear error review pursuant to 28 U.S.C. §636(b)(1). The Court must make a *de novo* determination of those portions of the Amended Report and Recommendation to which objections have been made. *Id.*; Fed. R. Crim. P. 59(b)(3).

On October 26, 2016, the United States filed an objection to a statement in the Amended Report and Recommendation that a police officer's conclusion with respect to probable cause to arrest Defendant Dalmau in connection with a January 5, 2014 shooting "[i]n hindsight . . . appears to have been wrong." Dkt. No. 43, p. 1. The United States argues the statement was unwarranted and not germane to the issue before the Court of whether there was probable cause to arrest the Defendant for a role in the shooting at the time of his arrest.

Defendant Dalmau was ordered to file a response to the objection of the United States, see Text Order 44, but neither filed a response nor any indication that he would not respond to the objection. Defendant did not otherwise object to the Amended Report and Recommendation.

Upon *de novo* review, the Court agrees with the United States that the hindsight observation of the Magistrate Judge should not be misinterpreted to mean that defendant Dalmau played no role in the shooting that was under investigation and led to his arrest on January 5, 2014. In the context of the Amended Report and Recommendation, the observation seems to have served only rhetorical purposes, and was not presented as a recommended finding of a relevant fact or of a pertinent legal conclusion. The Amended Report and Recommendation is adopted for the

reasons stated by the Magistrate Judge. To avoid confusion, the Court confirms it is expressing no opinion whether the Defendant had a role in the January 5, 2014 shooting that led to his arrest.

### **CONCLUSION**

For the reasons stated above, the motion to suppress evidence filed by the Defendant, Christian O. Dalmau (Dkt. No. 21), is denied. The parties shall appear to set a date for trial on December 8, 2016, at 11:00 a.m. Any request to adjourn the appearance to set a date for trial shall be in writing and shall address the requirements of the Speedy Trial Act, 18 U.S.C. § 3161 *et seq.*

**IT IS SO ORDERED.**

*Richard J. Arcara*

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HONORABLE RICHARD J. ARCARA  
UNITED STATES DISTRICT COURT

Dated: December 6, 2016